

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory)	MD Docket No. 07-81
Fees for Fiscal Year 2007)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ hereby files its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) April 18, 2007, Notice of Proposed Rulemaking (NPRM) regarding the assessment methods to collect the Fiscal Year (FY) 2007 regulatory fees pursuant to Section 9 of the Communications Act of 1934.² The Commission seeks comment on, among other issues, its tentative conclusion that providers of interconnected Voice over Internet Protocol (VoIP) should pay regulatory fees.³

The Commission has sufficient authority under Title I to extend the regulatory fee obligation to interconnected VoIP providers. Interconnected VoIP providers must pay their fair share of the regulatory burdens they impose on the Commission; to allow otherwise would

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In re the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Notice of Proposed Rulemaking, MD Docket No. 07-81 (rel. Apr. 18, 2007) (NPRM).

³ NPRM, ¶ 10.

impose undue burdens on other regulatees, including rural incumbent local exchange carriers (ILECs). The Commission should assess the regulatory fee based on the interconnected VoIP providers' revenues, to be consistent with the method used for interstate telecommunications service providers and with the VoIP providers' universal service fund (USF) obligations.

I. Introduction

The Commission tentatively concluded that Section 9 of the Communications Act authorizes the Commission to assess and collect regulatory fees to recover the costs of regulatory activities as they pertain to interconnected VoIP providers.⁴ Section 9(a) provides:

a) General authority

(1) Recovery of costs

The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.⁵

Currently, the Commission collects the regulatory assessment fee from Media services (radio stations, television stations, satellite stations, broadcast facility licenses), Wireline services (common carriers, including rural ILECs), Wireless services (commercial mobile radio service cellular, mobile, and messaging services), Multichannel video programming distributor services (cable television operators and CARS licensees), and International services (earth stations, geostationary orbit space stations, non-geostationary orbit satellite systems, international bearer circuits).⁶ The Commission seeks to collect \$290,295,160 in regulatory fees for FY 2007.⁷ The

⁴ NPRM, ¶ 10.

⁵ 47 U.S.C. § 159(a).

⁶ NPRM, ¶ 34.

⁷ NPRM, ¶ 1. The Commission is obligated to collect the sum of \$290,295,160. *Id.*, ¶ 3. This fee will be collected based on an assessment of regulatees' FY 2006 receipts collected. *Id.*, ¶ 4.

Commission also tentatively concluded that it should retain the established methods and policies of collection that it has used since FY 2003.⁸

The Commission concluded that it has the authority to assess interconnected VoIP providers as a logical extension of the Commission's 2006 *Interim Contribution Methodology Order* in which the Commission required interconnected VoIP providers to contribute to the USF based on a percentage of their interstate revenues.⁹

II. The FCC Has The Authority To Assess Interconnected VoIP Providers.

In its 2006 *Interim Contribution Methodology Order*, the Commission exerted its Title I ancillary jurisdiction over interconnected VoIP providers because it: "is reasonably ancillary to effective performance of the Commission's obligations under section 254 of the Act."¹⁰ That same justification exists for allowing the Commission to recover the regulatory costs created by interconnected VoIP providers.

The Commission directed interconnected VoIP providers to contribute to the USF based on either: 1) a 64.9% safe harbor amount; 2) its actual interstate revenues; or 3) an FCC-approved traffic study.¹¹ The Commission said requiring USF contribution from VoIP providers

was appropriate because:

".....interconnected VoIP providers are "providers of interstate telecommunications" under section 254(d), and we assert the Commission's permissive authority to require

⁸ *Id.*, ¶ 2.

⁹ *Universal Service Contribution Obligations for Providers of Interconnected Voice Over Internet Protocol (VoIP) Service*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (2006 Interim Contribution Methodology Order).

¹⁰ NPRM, ¶ 10, n. 16; 2006 Interim Contribution Methodology Order, ¶¶ 46, 47.

¹¹ 2006 Interim Contribution Methodology Order, ¶ 54.

interconnected VoIP providers “to contribute to the preservation and advancement of universal service” because “the public interest so requires.”¹²

Requiring interconnected VoIP providers to pay an appropriate portion of the FCC’s annual regulatory expenses will assist the FCC in meeting its statutory mandates. The public interest requires that interconnected VoIP providers contribute an appropriate sum to the FCC’s regulatory assessment fund.

III. Interconnected VoIP Providers Should Pay Their Fair Share Of Regulatory Costs.

The Commission correctly concluded that it would be appropriate to assess interconnected VoIP providers with a portion of the Commission’s assessment fees. The regulatory assessment fee is designed to recover FCC costs caused by enforcement actions, policy and rulemaking decisions, user information and international actions.¹³ All of these areas involve interconnected VoIP providers, and problems requiring regulatory involvement will escalate as the number of VoIP subscribers increases.¹⁴ The Commission included VoIP providers to ease the strain on the sustainability of the USF; so, too, should the Commission include VoIP providers to ease the burden of regulatory expenses.¹⁵

The Commission has been, is and will be involved in numerous policy-setting dockets involving interconnected VoIP providers, including the 2004 *Vonage Order*,¹⁶ the 2005 *VoIP*

¹² 2006 Interim Contribution Methodology Order, ¶ 35.

¹³ NPRM, ¶ 1.

¹⁴ The FCC estimates that there were 4.2 million VoIP subscribers at the end of 2005 and estimates the number will grow to 19 million residential VoIP subscribers by the end of 2009. 2006 Interim Contribution Methodology Order, ¶¶ 3, 19 (n. 73).

¹⁵ *Ibid.*

¹⁶ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (preempting the Minnesota Public Utilities Commission from regulating Vonage’s VoIP service).

911 Order,¹⁷ and the 2006 *Interim Contribution Methodology Order*. This list of VoIP-related orders will continue to grow as the sector evolves, so it is entirely appropriate and necessary that the Commission include interconnected VoIP providers among the group of regulatees for fee assessment purposes.

A quick review of the FCC's announced enforcement decisions reveals that the FCC's Enforcement Bureau has issued several Orders in the past few years regarding regulatory fee collections.¹⁸ The Enforcement Bureau's target list may soon be increased to include delinquent USF contributions by VoIP providers.¹⁹ These costs should not be borne by other regulatees; indeed, they are already paying their fair share.²⁰ The FCC's expenses for resolving consumer complaints may also increase substantially if VoIP consumers complain about VoIP misleading advertisements, inadequate 911 coverage, poor quality of service, abrupt termination of service, delays in number porting, do-not-call violations, truth-in-billing, etc. VoIP has and will continue to generate its own regulatory impositions and burdens, and interconnected VoIP providers should pay their share.

IV. Fee Assessments Of Interconnected VoIP Providers Should Be Based On Revenues.

¹⁷ *IP-Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, ¶ 24 (2005) (defining "interconnected VoIP service").

¹⁸ See, e.g., *Intelecom Solutions, Inc.*, Order and Consent Decree, File No. EB-05-IH-0034 (rel. Dec. 21, 2006) (investigation into carrier registration, revenue reporting, and contribution to USF); and *Telecom House, Inc.*, Order and Consent Decree, File No. EB-04-IH-0656 (rel. Sept. 21, 2006) (investigation into carrier registration, USF, Telecommunications Relay Services, the North American Numbering Plan Administration and regulatory fees); both orders are available at <http://www.fcc.gov/eb/usfc/>.

¹⁹ The Enforcement Bureau acknowledges that it "actively pursues violators of section 254 of the Act and supporting Commission's rules by means of independent investigations, audits of carrier compliance, debarment of violators, and hearings practice." <http://www.fcc.gov/eb/usfc/>.

²⁰ NPRM, ¶ 34.

Another question posed in the NPRM is whether VoIP providers should be assessed based on revenues or numbers.²¹ The better approach is to base the regulatory assessment fee on the interconnected VoIP providers' revenues because: 1) this coincides with the assessment method used by interstate telecommunications service providers, and 2) this is how the Commission assesses VoIP USF obligations.

The Commission determined that VoIP providers' obligations for USF contributions would model the contribution method used for interstate telecommunication service providers because VoIP service is fundamentally different from wireless service and is marketed as an alternative to interstate calls and substitute for wireline toll service.²² The fundamental difference carries over to assessing VoIP providers for regulatory expenses and should influence the Commission's choice of using revenues over numbers as the assessment base. Furthermore, using revenues will simplify the reporting and auditing requirements for both the FCC and the VoIP providers by unifying the calculation basis for both USF contributions and regulatory assessment fees. The Commission should use revenues, not numbers, to calculate the regulatory assessment fee.

V. Conclusion.

For these reasons, the Commission should exercise its Title I ancillary jurisdiction to extend the regulatory fee obligation to interconnected VoIP providers. Interconnected VoIP providers must pay their fair share of the regulatory burdens they impose on the Commission; to allow otherwise would impose undue burdens on other regulatees, including rural ILECs. The

²¹ NPRM, ¶ 10.

²² 2006 Interim Contribution Methodology Order, ¶ 55.

Commission should assess the regulatory fee based on the interconnected VoIP providers' revenues, to be consistent with the method used for interstate telecommunications service providers and with VoIP providers' USF obligations.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ Daniel Mitchell
Daniel Mitchell
Karlen Reed

Its Attorneys

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

May 3, 2007

CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in MD Docket No. 07-81, FCC 07-55, was served on this 3rd day of May 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Kevin.Martin@fcc.gov

/s/ Adrienne L. Rolls
Adrienne L. Rolls

Commissioner Deborah Taylor Tate
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Deborah.Tate@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com